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In the Supreme Court of the United States

OCTOBER TERM, 1959

IN RE ESTATE OF JOHN S. CHOJNACKI,
AN INCOMPETENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
GEORGE COCHRAN DOUB,
Assistant Attorney General,
ALAN S. ROSENTHAL,
SHERMAN L. COHN,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	1
Statutes involved	2
Statement	2
Argument	3
Conclusion	6

CITATIONS

Statutes:	
Act of June 17, 1957:	
§ 1001(a) (71 Stat. 122, 38 U.S.C. (1952 ed. Supp. V) 3001(a))	3
§ 1503(b) (71 Stat. 137, 38 U.S.C. (1952 ed. Supp. V) 3503(b))	3
Act of August 7, 1959, § 2, 73 Stat. 298, 38 U.S.C. (1959 Supp.) 3203(b) (2) and (3)	4, 6
38 U.S.C. 3101(a)	2
38 U.S.C. 3203(b)	2, 4
Miscellaneous:	
38 C.F.R. 3.276(d), 13.260(b)	5
H.R. 53, 85th Cong., 1st Sess	5
H. Rep. 279, 85th Cong., 1st Sess	5

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OPINIONS BELOW

The opinion of the Orphans' Court of Erie County, Pennsylvania (R. 9a) is reported at 15 Pa. D. & C. 2d 703. The opinion of the Supreme Court of Pennsylvania (Pet. 16) is reported at 397 Pa. 596.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered on December 30, 1959. The petition for a writ of certiorari was filed on March 16, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether under 38 U.S.C. (1958 ed.) 3203(b)(3) the Veterans' Administrator has authority to deter-

mine what part of an incompetent veteran's federal pension should be paid to a state institution for the care of the veteran.

STATUTES INVOLVED

38 U.S.C. (1958 ed.) 3101(a) and 3203(b), recodifying §§ 1001(a) and 1503(b) of the Act of June 17, 1957, 71 Stat. 122, 137, are set forth in the petition at pp. 4–6.

STATEMENT

John S. Chojnacki, an incompetent veteran receiving a federal pension of $78.75 per month for a non-service-connected disability, is a patient in a Pennsylvania state mental hospital (R. 2a–3a). On May 5, 1957, a guardian was appointed for the veteran upon the petition of the Commonwealth of Pennsylvania (R. 2a). The guardian's first account showed net assets of $5,111.62, all but $1,450 of which had been obtained from the veteran's pension (R. 2a–3a). In earlier proceedings, it was held that the Commonwealth was entitled to be paid in full for the cost of care of the veteran out of the funds not derived from the federal pension, which order has since exhausted those funds. 13 Pa. D. & C. 2d 152. After the non-pension funds were exhausted, on or about January 1, 1958, the guardian paid the Commonwealth, with the approval of the Veterans' Administration, $40 a month out of the federal pension, a payment equal to the amount that it was the policy of the Veterans' Administration (R. 6a–7a), acquiesced in by the Commonwealth (R. 13a–14a), to pay to the Commonwealth directly for the maintenance of veterans receiving the

same pension for whom no guardian had been appointed.

On May 15, 1958, the Commonwealth petitioned the Orphans' Court of Erie County for an order directing the guardian to pay the full cost of care ($138 a month) out of the pension funds (R. 1a, 2a–3a). The Veterans' Administration intervened and opposed any payment in excess of $40 a month (R. 5a–8a). The Orphans' Court rejected the Commonwealth's claim to a greater payment, holding that under 38 U.S.C. 3203(b)(3)[1] the power to determine the amount payable out of a veteran's pension to a state institution for care and maintenance lay with the Veterans' Administrator, whose determination was binding (R. 9a–12a). The Supreme Court of Pennsylvania affirmed (Pet. 16–20).

ARGUMENT

1. Although petitioner asserts that the result reached by the court below conflicts with that reached on similar facts by other state courts (Pet. 12), it acknowledges that the only question raised in the other state cases was whether the exemption provision in 38 U.S.C. 3101(a) barred a guardian from making any payment to a state for the cost of maintaining the incompetent veteran (Pet. 12–13). The court below, however, as petitioner also acknowledges (Pet. 14), did not hold that no payment could be made to the state, but only that, under 38 U.S.C. 3203(b)(3), the

[1] For convenience, all references are to the statute as recodified in the 1958 edition of the Code. Sections 1001 and 1503 of the Act of June 17, 1957 (71 Stat. 122, 137, 38 U.S.C. (1952 ed. Supp. V) 3001, 3503), cited by the courts below, appear as §§ 3101 and 3203, respectively, in the 1958 recodification.

authority to determine the *amount* to be paid to the state was vested in the Administrator rather than in the state courts. Hence it is only the effect of § 3203 (b)(3) that is immediately in issue here, and on that question there is no conflict among the state courts.

2. On the precise holding of the court below—that § 3203(b)(3) gave the Administrator authority to determine the amount to be paid the state—petitioner limits its attack to the contention that that provision applies only to cases of veterans who are being treated by the Veterans' Administration and not to those hospitalized in state institutions. That contention, which is all that need be answered here, is, we believe, plainly without merit.

The sole basis for petitioner's argument is that the first two paragraphs of § 3203(b), dealing with a quite different subject matter,[2] were, at the time of suit,[3] expressly limited to veterans furnished treatment or care by the Veterans' Administration. That difference in the wording of the paragraphs, however, simply emphasizes, by contrast, the absence of such a limitation in paragraph (3). That § 3203(b)(3) empowers the Administrator to make institutional awards to state hospitals has, moreover, been the con-

[2] In general, the partial withholding of an incompetent veteran's benefits for payment to him upon his recovery.

[3] By the Act of August 7, 1959, § 2, 73 Stat. 298, however, Congress revised paragraph (2) to make it applicable to veterans treated "by the United States, or any political subdivision thereof", thus extending it to include state hospitals. See 38 U.S.C. (1959 Supp.) 3203(b) (2) and (3) (former paragraph (3) being renumbered as paragraph (4)). That presumably would destroy the basis of petitioner's argument for any prospective application.

sistent administrative interpretation, embodied in the regulations (*e.g.*, 38 C.F.R. 3.276(d), 13.260(b)), and is conclusively confirmed by the legislative history of the section.[4] Indeed, it is only by virtue of the interpretation of that provision as applying to state hospitals that Pennsylvania itself is now receiving direct payments from the Veterans' Administration on behalf of numerous other veterans in that state's hospitals for whom no guardians have been appointed (see R. 13a–14a).

3. Whatever importance the question here might otherwise have had is much diminished by the 1959 amendments to the statute. Full payment of the state's current maintenance costs of $138 a month, at least for a time, would have been possible in this case only because of the relatively substantial estate that had previously been accumulated from the federal pension. The Act of August 7, 1959 (§ 2, 73 Stat. 298), however, amended the statute to provide for

[4] In the 1957 revision of the statute, the corresponding provision of the bill as first introduced (§ 1503(b)(3), H.R. 53, 85th Cong., 1st Sess.) did in fact expressly limit paragraph (3) to veterans being furnished care "by the Veterans' Administration." The Veterans' Administration objected to that limitation, stating (H. Rep. 279, 85th Cong., 1st Sess., p. 24):

"The similar provision of existing law dealing with institutional awards is not limited to cases where the incompetent veteran is being furnished treatment or care 'by the Veterans' Administration.' Accordingly, the quoted words should be deleted * * *."

The House Committee then reported the bill without the limitation, noting only that it had made all the amendments suggested by the Veterans' Administration, with an exception not relevant here. H. Rep. 279, *supra*, at p. 5. The section was enacted as reported. 71 Stat. 137

suspension of pension payments whenever a federal or state-hospitalized incompetent veteran's estate exceeds $1,500, the payments to be resumed only when the estate is reduced to $500.[5] Thus no accumulation of federal benefits as large as Chojnacki's can occur in the future, and out of an estate reduced to $500 and pension receipts of $78.75 a month, it would be impossible for the state to be paid significantly more than $40 a month if any provision at all is to be made for the incompetent's immediate personal needs. At least prospectively, therefore, the question presented here seems of little practical importance.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
ALAN S. ROSENTHAL,
SHERMAN L. COHN,
Attorneys.

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[5] See 38 U.S.C. (1959 Supp.) 3203(b) (2) and (3). Paragraph (2) had previously applied only to veterans being treated by the Veterans' Administration. Paragraph (3), which is new (old paragraph (3) having been renumbered as paragraph (4)), permits the Administrator to make direct payments out of the suspended pension to the hospitalizing institution for the incompetent's current care and maintenance. That provision also significantly affects the legal context in which questions of the kind involved here would arise in the future.

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